

Appl. No. : 10/790,671  
Filed : March 1, 2004

### REMARKS

In response to the Office Action mailed April 13, 2007, the Applicants respectfully request the Examiner to reconsider the above-captioned application in view of the foregoing amendments and the following remarks.

#### *Summary of the Office Action*

In the April 13, 2007 Office Action, Claims 19-23 stand objected to for minor informalities. Claims 19-23 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which application regards as the invention. In addition, Claim 19 stands rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,963,144, issued to Huene (hereinafter "Huene"). Further, the Specification was objected to as failing to provide proper antecedent basis for the claimed subject matter of independent Claim 11.

#### *Summary of the Allowable Subject Matter*

In the Office Action, the Examiner allowed Claims 11-18. Further, the Examiner indicated that Claims 20-23 would be in condition for allowance if rewritten or amended to overcome the rejection(s) under 35 U.S.C. § 112, second paragraph, set forth in the Office Action, and to include all of the limitations of the base claim and any intervening claims.

#### *Summary of the Amendment*

Upon entry of this amendment, Applicants will have amended paragraph 110 of the Specification and Claims 11 and 20-23. Further, Applicants will have added Claims 24-31 and canceled Claim 19.

#### *Traversal of Rejection under 35 U.S.C. § 112, Second Paragraph*

In the Office Action, Claims 19-23 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which application regards as the invention. Further, Claim 19 recites the limitation "the

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inner body” in line 7. The Examiner notes that there is insufficient antecedent basis for this limitation in the claim.

Applicants traverse this rejection and have amended the language of original Claim 19 to recite “inner component,” instead of “inner body” in order to expedite prosecution of this application. Applicants submit that this overcomes the rejection under Section 112 and respectfully request the Examiner to withdraw this rejection.

***Traversal of Rejection under 35 U.S.C. § 102(b)***

In the Office Action, Claim 19 stands rejected under 35 U.S.C. § 102(b) as being anticipated by Huene. Applicants respectfully traverse this rejection. However, in order to expedite the prosecution of the present application, Applicants have canceled Claim 19, and therefore submit that this rejection is now moot.

***Objection to Specification and Amendment of Claim 11***

The Specification was objected to as failing to provide proper antecedent basis for the claimed subject matter of independent Claim 11. Applicants have amended paragraph 110 of the Specification, as noted above, to clearly recite the newly added features recited in Claim 11. Applicants further submit that Claim 11 also finds support in Paragraphs 97-113 of the Specification as written.

Additionally, Applicants have also amended Claim 11 to correctly recite “wherein when proximally withdrawing the elongate body of the bone fixation device with respect to the proximal anchor, the distal end of the second component does not extend axially beyond the distal end of the first component” (emphasis added). Applicants believe that these amendments overcome the objection to the Specification, and respectfully request the Examiner to withdraw this objection.

***Allowed Claims 11-18 and 20-23***

Applicants gratefully acknowledge the Examiner’s indication that Claims 11-18 would be allowable if amended to overcome minor objections, and that Claims 20-23 would be in condition for allowance if rewritten or amended to overcome the rejection(s) under 35 U.S.C. §

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112, second paragraph, set forth in the Office Action, and to include all of the limitations of the base claim and any intervening claims. Applicants have amended the claims as requested by the Examiner and submit that these claims are now in condition for allowance.

#### ***New Claims 24-31***

Applicants also submit new Claims 24-31 for consideration. These claims depend directly or indirectly from Claims 20-23, which are now in condition for allowance. Therefore, Applicants respectfully submit that new Claims 24-31 should be allowable for at least the reason that they each depend from an allowable base claim. Therefore, Applicants respectfully request that the Examiner indicate allowance of Claims 24-31.

#### **CONCLUSION**

Applicants respectfully submit that the above rejections and objections have been overcome and that the present application is now in condition for allowance. Therefore, the Applicants respectfully request that the Examiner indicate that Claims 11-18 and 20-31 are now acceptable and allowed. Accordingly, early issuance of a Notice of Allowance is most earnestly solicited.

Applicants respectfully submit that the claims are in condition for allowance in view of the above remarks. Any remarks in support of patentability of one claim, however, should not be imputed to any other claim, even if similar terminology is used. Additionally, any remarks referring to only a portion of a claim should not be understood to base patentability on that portion; rather, patentability must rest on each claim taken as a whole. Applicants respectfully traverse each of the Examiner's rejections and each of the Examiner's assertions regarding what the prior art shows or teaches, even if not expressly discussed herein. Although amendments have been made, no acquiescence or estoppel is or should be implied thereby. Rather, the amendments are made only to expedite prosecution of the present application, and without prejudice to presentation or assertion, in the future, of claims on the subject matter affected thereby. Applicants also have not presented arguments concerning whether the applied references can be properly combined in view of, among other things, the clearly missing elements

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noted above, and Applicants reserve the right to later contest whether a proper motivation and suggestion exists to combine these references.


The undersigned has made a good faith effort to respond to all of the rejections in the case and to place the claim and drawings in condition for immediate allowance. Nevertheless, if any undeveloped issues remain or if any issues require clarification, the Examiner is respectfully requested to call the Applicants' attorney in order to resolve such issue promptly.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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Dated: 7/13/07

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